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Via E-Filing

July 17, 2012

Hon. Phyllis J. Hamilton
United States District Judge
U.S. District Court
Oakland Courthouse
Courtroom 3 - 3rd Floor
1301 Clay Street
Oakland, CA 94612

Re: Kovtun v. VIVUS, Inc. et al., Case No. 4:10-CV-04957-PJH

Dear Judge Hamilton:

We write on behalf of VIVUS, Inc. ("VIVUS"), Leland F. Wilson, and Wesley W. Day, Ph.D., defendants in the above-captioned action (together, "Defendants"). Defendants' motion to dismiss lead plaintiff's Second Amended Complaint was argued and submitted on April 18, 2012. Pursuant to Local Rule 7-3, Defendants request leave to provide the Court with a very brief, non-argumentative letter updating Your Honor concerning the status of the U.S. Food and Drug Administration's consideration of VIVUS's New Drug Application for Qnexa, and of a pair of recent case decisions that may be relevant to the pending motion. Should the Court grant leave to submit such a letter, Defendants would submit it within 24 hours of the Court's order. Defendants appreciate the Court's consideration of this request.

Very truly yours,

Michael L. Charlson / BT

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cc: David Brower, Esq.

7/24/12

